

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

OSCAR RENTERIA and DENISE  
RENTERIA, individually and in their  
capacities as Co-Trustees of the  
RENTERIA FAMILY TRUST,

3:11-cv-00534-ECR-CWH

Plaintiffs,

vs.

Order

EUGENE CLEVELAND CANEPA, an  
individual,

Defendant.

Now pending is a Motion for Judgment on the Pleadings (#11) by Plaintiffs, Oscar Renteria and Denise Renteria ("Plaintiffs"), individually and in their capacities as Co-Trustees of the Renteria Family Trust, against Defendant, Eugene Cleveland Canepa ("Defendant").

The motion is ripe, and we now rule on it.

**I. Factual and Procedural Background**

Between September 20, 2006, and December 29, 2006, Plaintiffs, who are residents of Napa, California, issued a series of loans, evidenced by demand promissory notes, to an entity known as French Quarter, Inc. ("French Quarter") and its principal, Defendant, a resident of Nevada. (Compl. ¶¶ 1-4 (#1).) Both parties agree that

1 the aggregate principal amount on the loans was \$845,000. (Compl. ¶  
2 4 (#1); Pls.' Mot. for J. on the Pleadings, Ex. 1 (#11).) Both  
3 parties further agree on the existence of the first four promissory  
4 notes, with principal amounts of \$100,000, \$70,000, \$100,000, and  
5 \$200,000, respectively. (Compl. ¶ 4 (#1); Answer ¶ 4 (#8).) Each  
6 of the first four notes has an interest rate of 12% per annum.  
7 Plaintiffs allege the existence a fifth promissory note with a  
8 principal amount of \$375,000 and a per annum interest rate of 10%,  
9 (Compl. ¶ 4 (#1)), which Defendant denies. (Answer ¶ 4 (#8).)  
10 Plaintiffs provide copies of all five promissory notes, signed by  
11 Defendant individually and by Defendant as President of French  
12 Quarter. (Compl. Exs. 1-5 (#1).) Each note provides that Defendant  
13 promises to pay Plaintiffs, on demand, the principal sum of the  
14 notes along with the accrued interest charges, with all payment  
15 going toward the accrued interest before the principal. (Id.) The  
16 notes further stipulate that Defendant must pay a 5% late charge if  
17 the notes are not timely paid as well as reasonable attorneys' fees  
18 in the event that Plaintiffs are required to bring suit to collect  
19 the money owed. (Id.)

20 On April 9, 2007, Plaintiffs demanded that Defendant pay the  
21 notes. (Id. Ex. 6 (#1).) Plaintiffs allege that Defendant failed  
22 to pay the notes, amounting to a default under the notes' contracts  
23 and triggering a total of \$44,250.00 in late fees. (Id. ¶ 8.)  
24 Defendant denies these allegations. (Answer ¶ 8 (#8).)

25 On August 3, 2007, French Quarter filed a voluntary petition  
26 for relief under Chapter 11 of the Bankruptcy Code. (Compl. ¶ 9  
27 (#1).) In August 2007, Plaintiffs, Defendant, French Quarter, and  
28

1 others executed a settlement agreement resolving disputes between  
2 French Quarter, its creditors, and other parties. (Id. ¶ 10.) The  
3 settlement agreement gives Plaintiffs "an allowed unsecured claim  
4 against [French Quarter's estate] in the amount of \$887,000 . . .  
5 without prejudice to [Plaintiffs] claiming any pre- or postpetition  
6 Interest and attorneys fees as allowed by the Bankruptcy Code."  
7 (Id. Ex. 7. pp.10-11) The agreement further explains that "[t]he  
8 parties hereto agree, and [Defendant] further warrants and  
9 represents, that [Defendant] was a co-maker on [Plaintiffs' notes]  
10 in the amount of \$845,000 and that these loans are valid and  
11 binding." (Id.) Finally, the agreement provides that "[Plaintiffs]  
12 expressly reserve[] all rights and claims against [Defendant] for  
13 the full balance of [Plaintiffs' notes] including without  
14 limitation, unpaid principal, interest and attorneys fees." (Id.)  
15 The settlement was approved by the United States Bankruptcy Court  
16 for the District of Nevada on September 8, 2008. (Id. Ex. 8.)

17 On November 30, 2008, Plaintiffs filed a post-settlement claim  
18 against French Quarter, seeking a total of \$1,158,216.48 in  
19 principal charges, interest accrued through August 3, 2007, late  
20 charges up to that date, and attorneys' fees. (Pls.' Mot. for J. on  
21 the Pleadings Ex. 1-A (#11).) On September 30, 2009, Defendant  
22 filed an objection to Plaintiffs' claim against French Quarter,  
23 objecting to the amount of the attorneys' fees as well as the  
24 accrual of postpetition interest. (Id. Ex. 1.)

25 In May 2010, the bankruptcy estate of French Quarter  
26 distributed \$354,800 to Plaintiffs. (Id. ¶ 16.) Plaintiffs allege  
27 that they applied this amount to the notes, covering the accrued  
28

1 interest up to May 2010 as well as \$4,146.85 of the late fees,  
2 leaving approximately \$38,103.15 in late fees. (Id. ¶ 16.) The  
3 interest accrued on the notes from May 2010 through July 2011 is  
4 approximately \$115,767.12. (Id. ¶¶ 17-18.) Plaintiffs allege that  
5 Defendant owes Plaintiffs \$1,003,017.70, reflecting the principal,  
6 \$845,000, the interest accrued from May 2010 through July 2011,  
7 \$115,767.12, remaining late fees, \$38,103.15, and attorneys' fees,  
8 \$4,147.43.

9 Plaintiffs filed their Complaint (#1) on July 26th, 2011.  
10 Defendant filed his Answer (#8) on September 19, 2011. On October  
11 12, 2011, Plaintiffs filed a Motion for Judgment on the Pleadings  
12 (#11). Defendant has failed to file an opposition.

## 13 14 **II. Judgment on the Pleadings Standard**

15 After the pleadings are closed but within such time as not to  
16 delay the trial, any party may move for judgment on the pleadings.  
17 FED. R. CIV. P. 12(c). "A judgment on the pleadings is properly  
18 granted when, taking all the allegations in the pleadings as true,  
19 the moving party is entitled to judgment as a matter of law." Milne  
20 ex rel. Coyne v. Stephen Slesinger, Inc., 430 F.3d 1036, 1042 (9th  
21 Cir. 2005) (internal quotation marks omitted).

22 The standard applied on a Rule 12(c) motion is similar to that  
23 standard which is applied on Rule 12(b)(6) motions. See Dworkin v.  
24 Hustler Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). As  
25 with Rule 12(b)(6) motions, review on a motion pursuant to Rule  
26 12(c) is normally limited to the pleadings. See Lee v. City of  
27 L.A., 250 F.3d 668, 688 (9th Cir. 2001). The Court should assume

1 the allegations of the non-moving party to be true and construe them  
2 in the light most favorable to the non-moving party, and the moving  
3 party must clearly establish that no material issue of fact remains  
4 to be resolved. McGlinchey v. Shell Chem. Co., 845 F.2d 802, 810  
5 (9th Cir. 1988). Without more, "conclusory allegations . . . are  
6 insufficient" to defeat a motion for judgment on the pleadings. Id.

7 If the district court relies on materials outside the pleadings  
8 in making its ruling, it must treat the motion to dismiss as one for  
9 summary judgment and give the non-moving party an opportunity to  
10 respond. FED. R. CIV. P. 12(d); see United States v. Ritchie, 342  
11 F.3d 903, 907 (9th Cir. 2003). "A court may, however, consider  
12 certain materials – documents attached to the complaint, documents  
13 incorporated by reference in the complaint, or matters of judicial  
14 notice – without converting the motion . . . into a motion for  
15 summary judgment." Ritchie, 342 F.3d at 908.

### 16 17 III. Discussion

#### 18 A. Breach of Contract

19 Plaintiffs seek damages for a breach of contract by Defendant.  
20 "To succeed on a claim for breach of contract, the plaintiff must  
21 show that a contractual relationship existed between it and the  
22 defendant, and that the defendant materially breached a duty owed to  
23 the plaintiff under the contract." Chamani v. Mackay, 124 Nev.  
24 1457, 238 P.3d 800, at \*1 (Nev. 2008). See also Brown v. Kinross  
25 Gold U.S.A., Inc., 531 F. Supp.2d 1234, 1240 (D. Nev. 2008).

26 Defendant does not dispute the validity of the first four  
27 promissory notes. (Answer ¶ 4 (#8).) Nor is the validity of the  
28

1 bankruptcy settlement agreement in contention. (Id. ¶¶ 10-15.)  
2 Defendant denies the existence of the fifth promissory note. (Id. ¶  
3 4.) However, Defendant admits the validity of a settlement  
4 agreement that states that he is responsible for \$845,000 in loans,  
5 the aggregate total of all of the promissory notes detailed in  
6 Plaintiffs' Complaint, including the fifth note. (Compl. Ex. 7  
7 pp.10-11 (#1).) Moreover, Defendant has provided this court no  
8 reason to doubt the authenticity of the fifth promissory note  
9 attached to Plaintiffs' Complaint. (Id. Ex. 5.) Defendant has made  
10 no plausible denial of the existence of a contract.

11 Defendant's denial of a breach of contract is similarly  
12 implausible. Defendant denies that he failed to make any payments  
13 under the notes when they were first demanded, (Answer ¶ 8 (#8).),  
14 but, again, he admits the validity of a settlement stating that he  
15 is required to pay \$845,000 plus accrued interest and attorneys'  
16 fees. (Id. ¶¶ 10-15.) Additionally, in his objection to  
17 Plaintiff's post-settlement claim against French Quarter for the  
18 full principal under the notes plus accrued interest and attorneys'  
19 fees, Defendant fails to contest the principal amount of \$845,000  
20 and disputes only the attorneys' fees and interest accrued after the  
21 petition for bankruptcy. (Pls.' Mot. for J. on the Pleadings Ex. 1  
22 (#11).) Defendant also provides no evidence of any payment on his  
23 part. In short, none of Defendant's allegations attempting to  
24 dismiss his contractual obligations rise above the level of  
25 "conclusory allegations." McGlinchey, 845 F.2d at 810. This court  
26 therefore finds a breach by Defendant of the five promissory notes  
27 as well as the bankruptcy settlement agreement.

1                    B. Postpetition Interest

2            In his objection to Plaintiff's post-settlement claim against  
3 French Quarter, (Id.), Defendant objects to the "post-interest"  
4 claimed by Plaintiff, stating that such interest is "not provided  
5 for by the Bankruptcy Code. (Id.) "Post-interest," interest that  
6 accrues after a debtor has filed its petition for bankruptcy, is  
7 limited by 11 U.S.C. § 502(b)(2), which prohibits courts from  
8 allowing the accrual of postpetition interest upon objection by an  
9 interested party.<sup>1</sup>

10            Nonetheless, this court has held that §502(b)(2) "applies only  
11 to claims against the bankruptcy estate." In re Washington Group  
12 Intern., Inc., 460 B.R. 280, 288 (D. Nev. 2011). Accord In re El  
13 Paso Refining, Inc., 192 B.R. 144, 146 (W.D. Tex. 1996) ("Section  
14 502(b)(2) only prevents unmatured interest from becoming an *allowed*  
15 *claim* against the debtor's estate . . . the obligation to pay  
16 interest vis-a-vis a guarantor is not tolled or eliminated by  
17 operation of section 502(b)(2)"); Bruning v. United States, 376 U.S.  
18 358, 362 n.4 (1964) (explaining that claims do not lose their  
19 interest bearing quality during bankruptcy and that the rule against  
20 postpetition interest is a rule of liquidation practice designed to  
21 protect the interest of creditors, not a substantive law with a  
22 policy of relieving a debtor from its interest obligations).  
23 Because Defendant was not a debtor in French Quarter's bankruptcy

---

24  
25            <sup>1</sup>11 U.S.C. §502(b)(2) does not explicitly mention postpetition interest,  
26 instead referring to claims for "unmatured interest." However, "unmatured interest"  
27 has been interpreted to mean interest that "was not yet due and payable at the time  
28 the debtor filed its bankruptcy petition," exactly the type of postpetition interest  
Defendant contests before this court. In re Thrifty Oil Co., 249 B.R. 537, 543  
(S.D. Cal. 2000).

1 proceedings, §502(b)(2) is inapplicable to him, and he is liable for  
2 the interest accrued during and after French Quarter's bankruptcy  
3 proceedings.

4 C. Attorneys' Fees

5 Plaintiffs seek relief for a total of \$1,003,017.70, with  
6 \$845,000 as the principal, \$115,767.12 in accrued interest, and  
7 \$38,103.15 in remaining late fees, leaving a total of \$4,147.43 for  
8 attorneys' fees. Under Nevada statutory law, parties are permitted  
9 to contractually provide for reasonable attorneys' fees in the event  
10 they are needed. N.R.S. § 18.010(1), (4); In re Dinan, 448 B.R.  
11 775, 785 (9th Cir. 2011). Each promissory note between Plaintiffs  
12 and Defendant provides that, upon default, Defendant will be liable  
13 for reasonable attorneys' fees expended in collecting the money  
14 owed. (Compl. Exs. 1-5 (#1).)

15 In determining the reasonableness of attorneys' fees, a Nevada  
16 district court is "tempered only by reason and fairness."  
17 University of Nevada v. Tarkanian, 110 Nev. 581, 879 P.2d 1180, 1186  
18 (Nev. 1994). "The court is not limited to one specific approach;  
19 its analysis may begin with any method rationally designed to  
20 calculate a reasonable amount." Shuette v. Beazer Homes Holdings  
21 Corp., 121 Nev. 837, 124 P.3d 530, 549 (Nev. 2005). Courts should,  
22 however, consider the fees in light of certain factors, namely "the  
23 advocate's professional qualities, the nature of the litigation, the  
24 work performed, and the result." Id. at 549. See also Brunzell v.  
25 Golden Gate Nat. Bank, 85 Nev. 345, 455 P.2d 31, 33 (Nev. 1969).

26 Plaintiffs' attorneys are known professionals in the state of  
27 Nevada. The case at bar is a routine breach of contract case that  
28



1 appears to have involved minimal discovery for Plaintiffs'  
2 attorneys. Plaintiffs fail to provide any receipts or other  
3 documents to account for the money requested for attorneys' fees.  
4 The requested amount of attorney's fees, \$4,147.43, 0.4 % of the  
5 total relief requested, appears reasonable, especially in light of  
6 the fact that Defendant has failed to provide any substantive  
7 evidence as to why the attorneys' fees are unreasonable and has  
8 failed to file a response to Plaintiffs' motion. However, because  
9 Plaintiffs have failed to attach any documentation supporting their  
10 request for attorney's fees, we shall deny those fees at this time.  
11 Plaintiffs may submit a separate motion for attorney's fees.

12 D. Unjust Enrichment

13 Plaintiffs further seek relief under a theory of unjust  
14 enrichment. (Compl. ¶¶ 41-47 (#1).) The elements of unjust  
15 enrichment are "(1) an enrichment; (2) an impoverishment; (3) a  
16 connection between the enrichment and the impoverishment; (4)  
17 absence of justification for the enrichment and the  
18 impoverishment[;] and (5) an absence of a remedy provided by law."  
19 Telesaurus VPC, LLC v. Power, 623 F.3d 998, 1009 (9th Cir. 2010)  
20 (quoting Community Guardian Bank v. Hamlin, 182 Ariz. 627 P.2d 1005,  
21 1008 (Ariz.App.1995)). Plaintiffs have failed to allege that  
22 Defendant has been enriched and Plaintiffs have been impoverished by  
23 any amount exceeding the money accounted for under the breach of  
24 contract theory. Unjust enrichment is therefore inapplicable  
25 because the damages sought under this theory are provided for by the  
26 breach of contract remedy granted to Plaintiffs.

1                   E. Money Lent and Money Had and Received

2           Plaintiffs seek relief under money lent and money had and  
3 received theories. (Compl. ¶¶ 28-40 (#1).) Both theories are  
4 common law remedies designed to provide relief for plaintiffs in the  
5 absence of a written contract. See generally Williams v. Glasgow, 1  
6 Nev. 533, 536 (Nev. 1865) (holding that to qualify for relief under  
7 a money lent theory, a plaintiff need only prove "indebtednesss for  
8 money loaned at the defendant's request, the promise to pay, and the  
9 refusal to do so"); Kondas v. Washoe County Bank, 51 Nev. 134, 271  
10 P. 465, 466 (Nev. 1928) ("[a]n action for money had and received can  
11 be maintained whenever one man has received or obtained the  
12 possession of the money of another, which he ought in equity and  
13 good conscience to pay over") (internal citations omitted). Because  
14 Plaintiffs are already entitled to recover the full contractual  
15 amount under a breach of contract theory, these additional theories  
16 are inapplicable.

17  
18                   **IV. Conclusion**

19           Even construed in the light most favorable to Defendant, there  
20 remain no genuine issues of material fact in this case. This court  
21 finds Defendant liable for damages for breach of contract on five  
22 promissory notes owed to Plaintiffs in the amount of \$998,870.27,  
23 reflecting the principal, \$845,000, the interest accrued from May  
24 2010 through July 2011, \$115,767.12, remaining late fees,  
25 \$38,103.15, without the requested attorneys' fees, \$4,147.43. As  
26 Plaintiffs have obtained the full relief they are entitled to under  
27 a breach of contract theory, Plaintiffs are not entitled to further

1 relief under theories of unjust enrichment, money lent, or money had  
2 and received.

3

4 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's Motion for  
5 Judgment on the Pleadings (#11) is GRANTED on the basis of breach of  
6 contract. Plaintiff shall be awarded the full contractual amount of  
7 \$845,000, plus \$115,767.12 in interest accrued between May 2010 and  
8 July 2011, and \$38,103.15 in late fees.

9 **IT IS FURTHER ORDERED** that Plaintiffs may submit a Motion for  
10 Attorney's Fees in accordance with Rule 54.

11 The Clerk shall enter the judgment accordingly.

12

13

14 DATED: July 3, 2012.

15

16

  
UNITED STATES DISTRICT JUDGE

17

18

19

20

21

22

23

24

25

26

27

28